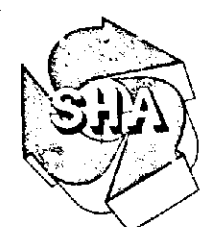


Petitioner's Attorney: Stuart R. Berger



**Maryland Department of Transportation
State Highway Administration**

Richard H. Trainor
Secretary
Hal Kassoff
Administrator

May 3, 1990

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204
Att: James Dyer

RE: Baltimore County
Richard Kim Property
Zoning meeting 5/8/90
W/S Liberty Road
MD 26
436' east of Essex Road
7028 Liberty Road
Item # 365

Dear Mr. Haines:

After reviewing the submittal for a special exception for one illuminated 12' by 25' advertising (sign) structure, we have forwarded this plan to our Highway Beautification Section c/o George Dawson (333-1642) for all comments relative to zoning.

Very truly yours,

Charles Rose
Charles Rose, Acting Chief
Engineering Access Permits
Division

LB/es

cc: Mr. J. Ogle
Mr. George Dawson w/att.

MAY 6 1990
ZONING OFFICE

333-1350

My telephone number is (301) 333-1350.
Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 345-0451 D.C. Metro - 1-800-492-5062 Statewide Toll Free
707 North Calvert St., Baltimore, Maryland 21203-0777

**BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE**

TO: J. Robert Haines
Zoning Commissioner
DATE: June 11, 1990
FROM: Pat Keller, Deputy Director
Office of Planning and Zoning
SUBJECT: Richard Kim, et ux,
Penn Advertising of Baltimore, Inc., Item No. 365

The Petitioners request a special exception for an outdoor advertising structure.

In reference to this request, staff offers the following comments:

1. This area is presently covered by the existing Liberty Road Action Plan as adopted in 1980. The Liberty Road Action Plan places limitations on the size of ground signs along Liberty Road (see attachment). The Petitioners' request for a 12' X 25' sign exceeds the requirements of the Liberty Road Action Plan.
2. This area is within the current study boundaries of the Woodlawn/Liberty Community Plan. One of the purposes of the current plan is to improve both the physical and perceived image of the community. As such, this office is in the process of preparing design guidelines and standards for properties within the study area.
3. According to a memo from the Zoning Commissioner dated February 2, 1990, a variance or special exception may be denied if it is viewed as detrimental to the community plan.

Based on the above comments, the planner for this area recommends that this petition should be denied.

If there should be any further questions or if this office can provide additional information, please contact Chris Rorke at 887-3211.

PK/JL/cmm

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
County Office Building, Suite 405
Towson, Maryland 21204
(301) 887-3354

May 24, 1990



Dennis F. Rasmussen
County Executive

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 332, 333, 354, 359, 362, 363, 364, 365, 366, 367, 369, 370, 371, and 372.

Very truly yours,

Michael S. Flanigan
Michael S. Flanigan
Traffic Engineer Associate II

MSF/lw

RECEIVED
MAY 25 1990
ZONING OFFICE

Baltimore County
Fire Department
700 East Joppa Road, Suite 901
Towson, Maryland 21204-5500
(301) 887-4500

Paul H. Reincke
Chief

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204



Dennis F. Rasmussen
County Executive

RE: Property Owner: RICHARD KIM, ET UX

Location: 7028 LIBERTY ROAD

Item No.: 365 Zoning Agenda: MAY 8, 1990

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *Carl J. Kelly* Noted and Approved
Special Inspection Division Fire Prevention Bureau

MAY 23 1990

Baltimore County, Maryland

PEOPLE'S COUNSEL
ROOM 304, COUNTY OFFICE BUILDING
111 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
887-2882/2188

PHYLLIS COLE FRIEDMAN
People's Counsel

August 7, 1990

The Honorable
J. Robert Haines
Zoning Commissioner
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Richard Kim, et al., Petitioners
Case No. 90-505-X

Dear Mr. Haines:

This is in response to the request by the Zoning Commissioner for a brief memorandum on the issue of what constitutes the "final order" in the previous "Kim" case, pursuant to Section 500.12 BCZ. People's Counsel originally suggested it was the date the Circuit Court issued its October 3, 1989 order reversing the Board of Appeals decision and holding it was divested of jurisdiction to rule on the decision of the Zoning Commissioner. After review of the regulation and the law, People's Counsel would add 30 days to that date, when the time for filing an appeal expired and the Court's Order was final.

The basic rule of finality is that an Order is final if it "concludes the rights of parties, or if it denies them means of further prosecuting or defending their rights and interests in the subject matter of the proceedings." Md. Comm'n on Human Rel. v. BGE, 296 Md. 46, at 52 (1983). Since the regulation requires the order not only be a final administrative order, but final as to the highest body considering it, this is the appropriate standard to apply. Copies are attached of Section 500.12 BCZ, the final Order of Judge Buchanan dated October 3, 1989, and the Md. Human Relations case for your convenience.

Irrespective of the issues before the Board and the Court, the fact is that only after the time for appealing Judge Buchanan's decision expired was there no further means for any of the parties to further prosecute or defend their rights in the original petition. That date therefore is the date from which the 18 months should be counted before a new petition can be filed and the instant Petition is premature.

Respectfully,

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

Enclosures
cc: Stuart R. Berger, Esquire

WEINBERG AND GREEN

ATTORNEYS AT LAW
100 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201-2773

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18 WEST PATRICK STREET
FREDERICK, MARYLAND 21701-5212
(301) 699-9600

FILE NUMBER

August 31, 1990

The Honorable J. Robert Haines
Zoning Commissioner of Baltimore County
111 West Chesapeake Avenue
Room 109
Towson, Maryland 21204

Re: In the matter of Richard Kim, et al.
for a Petition for Special Exception
7028 Liberty Road
Case No. 90-505-X

Dear Zoning Commissioner Haines:

Please accept this letter in response to Ms. Friedman's most recent letter to you dated August 24, 1990. Ms. Friedman alleges that the case I cited in my previous letter to you "is no longer good law and Mr. Berger's response is inapposite."

Please be advised that the case I cited in my previous letter to you dated August 10, 1990 (i.e. *Tyrie v. Baltimore County*, 215 Md. 135 (1957)) is still "good law." According to Sheppard's Maryland Citations (Volume 1, 1988), *Tyrie* has been cited fifteen (15) times by the Court of Appeals. The *Tyrie* case has also been cited by the United States District Court for the District of Maryland, the Court of Special Appeals, the Maryland Law Review and the third edition of the American Law Reports (ALR).

Indeed, *Tyrie* has been cited by both the Court of Appeals and the Court of Special Appeals after the County Council repealed and re-enacted Section 500.12 of the Baltimore County Zoning Regulations on March 6, 1978. In sum, *Tyrie* is still "good law," and clearly dispositive of the issue which you asked Ms. Friedman and I to address.

WEINBERG AND GREEN

The Honorable J. Robert Haines
August 31, 1990
Page 2

If you would like me to address this matter further, I welcome that opportunity. Thank you for your consideration.

Very truly yours,

Stuart R. Berger
Stuart R. Berger

0610p/0366/rasj

**BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE**

TO: Zoning Advisory Committee DATE: May 11, 1990
FROM: Robert W. Bowling, P.E.
RE: Zoning Advisory Committee Meeting
for May 8, 1990

The Developers Engineering Division has reviewed the subject revised zoning items and we have no comments for Items 332, 333, 354, 362, 363, 365, 369 and 370.

For Items 367, the previous County Review Group Comments still apply.

For Item 359, 2-foot setback for parking is inadequate for vehicle overhand against State Highway Administration fence.

For Item 364, the address on the plat is #9400 for Lot 53.

For Item 366, the correct plat reference is SM 56/139.

For Items 371 and 372, no plans were received for review and comment.

For 89-483A, we have no comment.

Robert W. Bowling
ROBERT W. BOWLING, P.E., Chief
Developers Engineering Division

RWB:s

IN THE MATTER OF
RICHARD KIM, et al.
FOR A PETITION FOR SPECIAL
EXCEPTION
7028 Liberty Road
Case No. 90-505-X

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY

PETITIONER'S MEMORANDUM

Introduction

Petitioner, Richard Kim and contract lessee, Penn Advertising of Baltimore, Inc., by their undersigned attorneys, submit this Memorandum in support of its petition for special exception.

Summary of the Case

On March 30, 1988, Petitioner filed a petition for special exception for one (1) illuminated 12' x 25' advertising (sign) structure located at 7028 Liberty Road in area zoned B.R. in Baltimore County, Maryland. On June 13, 1988, a hearing was held before Zoning Commissioner Haines regarding the petition for special exception. On October 10, 1988, Zoning Commissioner Haines denied the petition. See Findings of Facts and Conclusions of Law in Case No. 88-487-X. The basis of the Zoning Commissioner's denial of the petition for special exception was that the "current 1987 edition of the B.C.Z.R.... contains no reference to the B.R. zone [and] [c]learly, the regulations do not permit outdoor advertising signs in this zone."

Thereafter, approximately two and a half weeks later (i.e. on October 27, 1988) representatives of the contract lessee, Penn Advertising of Baltimore, Inc., appeared for a hearing before Zoning Commissioner Haines regarding two separate and distinct petitions for special exceptions for outdoor advertising signs. Those cases, docketed as case nos. 89-77-X and 89-78-X both involved petitions for special exceptions for outdoor advertising signs in B.R. zones.¹ At the hearing regarding 89-77-X and 89-78-X, the petitioner and contract lessee, by their representative, Stuart R. Berger, submitted a lengthy written memorandum detailing the decisions in two contested cases² that the earlier disseminated mimeographed version of Section 413.3 of the B.C.Z.R., which includes B.R. as a zone which a special exception could be granted, is the controlling law.

Thereafter, after review of Petitioner's Memorandum, on December 6, 1988, Zoning Commissioner Haines granted both of the requested petitions for special exceptions for outdoor

- 1 Case No. 89-77-X involved a petition for special exception for one double faced illuminated 12' x 25' outdoor advertising sign in an area zoned B.R. Similarly, Case No. 89-78-X involved a petition for special exception for one single and one double faced illuminated 12' x 25' outdoor advertising sign in areas zoned B.R. and M.L.
- 2 See *Metromedia, Inc. v. Baltimore County*, Eq. No. 103167 (Reine, J.) and *In the Matter of the Application of Euclay Realty for a Special Exception*, Circuit Court for Baltimore County Case No. 21135184CG435, discussed infra.

advertising in B.R. zones. Thus, as a result of the decisions by two judges of the Circuit Court for Baltimore County³ and two subsequent decisions by Zoning Commissioner Haines,⁴ it is clear that the petitioner, if it satisfies the requirements of Sections 413.3 and 502.1 of the B.C.Z.R., is entitled to a special exception for an outdoor advertising sign in a B.R. zone.

Accordingly, the contract lessee, Penn Advertising of Baltimore, Inc. and the petitioner herein elected to withdraw the appeal pending before the County Board of Appeals of Baltimore County in case no. 88-487-X. That decision was based, in part, on Zoning Commissioner Haines' subsequent decision in case nos. 89-77-X and 89-78-X granting petitions for special exceptions for outdoor advertising signs in areas zoned B.R. Nevertheless, despite the prior withdrawal of the appeal, the County Board of Appeals ordered "that the Zoning Commissioner's Order Denying the requested special exception be AFFIRMED." The Order of the County Board of Appeals further provides, in pertinent part, that:

The record will indicate that Petitioner's attorney contacted the Board Chairman on April 11, 1989 and indicated that he did not intend to pursue the petition and wished it withdrawn.

³ See Footnote 2, supra.

⁴ See Findings of Facts and Conclusions of Law in case nos. 89-77-X and 89-78-X.

Nevertheless, as stated *supra*, on April 13, 1989, the County Board of Appeals affirmed the Zoning Commissioner's denial of the Special Exception.

As a result of the error committed by the County Board of Appeals, the petitioner and contract lessee appealed the decision to the Circuit Court for Baltimore County. The Circuit Court, per the honorable William R. Buchanan, Sr. held that:

The Order of the County Board of Appeals for Baltimore County dated April 13, 1989 is Reversed. The appeal pending before the County Board of Appeals of Baltimore County (CBA) was dismissed prior to the April 12, 1989 hearing date. Therefore, the CBA was divested of jurisdiction to rule on the decision of the Zoning Commissioner. The order of the CBA in affirming the decision of the Zoning Commissioner was in error.

Thereafter, on February 16, 1990, Zoning Commissioner Haines drafted a letter to Barry Freedman of Penn Advertising advising him that the only way to have this matter reheard "would be to file another Petition requesting new relief." Subsequently, a new Petition for Special Exception was filed, and the petitioners respectfully request that a petition for special exception be granted for one single-faced outdoor advertising sign at 7028 Liberty Road.

BACKGROUND

In an effort to explain the basis for the petitioner's position that outdoor advertising signs are

permitted in B.R. zones, the petitioners endeavor to provide a brief background of the decisions issued by the Circuit Court for Baltimore County pertaining to the issue at bar, i.e. the validity of petitioning for a special exception for an outdoor advertising sign in a B.R. zone.

On July 1, 1981, the Circuit Court of Baltimore County, per Raine, J., issued a clear opinion of *Metromedia, Inc. v. Baltimore County*, Eq. No. 103167. A copy of Judge Raine's Opinion in *Metromedia* is attached hereto as Exhibit A and incorporated herein by this reference. The Circuit Court for Baltimore County declared that applications for special exceptions for outdoor advertising signs, under Section 413.3 of the County's Zoning Regulations, must be determined under the provisions published in the regulations as printed in 1957 and 1963. The 1975 Gold Book version of Section 413 was found inapplicable. Further, the Circuit Court for Baltimore County, in declaring what law applied pursuant to Maryland's Declaratory Judgment Act,⁵ reasoned that amendments to the zoning regulations had to adhere to Section 22-21 and 22-22 of the County Code, which requires notice and hearing prefatory to amendment. Because no notice or hearings preceded the Gold Book amendment at bar in *Metromedia*, the publications of 1957 and 1963 -- long thereafter applied in the County -- were

⁵ See §§ 3-402, 306, 3-411, Courts Article, Md. Code.

declared binding. Despite *Metromedia*, within months of that clear declaration, the County merely republished Section 413 in the same fashion declared fouled in *Metromedia*.

The core -- and unusual -- issue at bar in these cases is whether, when promulgating its current edition of the zoning regulations which leaves out of Section 413.3 the B.R. (Business Roadside) zone, the Zoning Commissioner can ignore the Circuit Court for Baltimore County's ruling in *Metromedia, Inc. v. Baltimore County*, Eq. No. 103167 and Sections 22-21 and 22-22(a) of the Baltimore County Code. These cases, therefore, require the Commissioner to determine what "version" of Section 413.3 is applicable to outdoor advertising signs petitioned for by the Petitioner and contract lessee. In order to assist this Court in understanding the issue(s) presented, the Petitioners set out, in pertinent part, the Opinion of Judge Raine in *Metromedia* and the two relevant sections of the County Code.

EXCERPT FROM *METROMEDIA V. BALTIMORE COUNTY*,
EQUITY NO. 103167

In 1955 the County published a mimeographed version of Section 413 of the Baltimore County Zoning Regulations which purported to be in conformity with certain regulations adopted by the County Commissioners of Baltimore County on March 30, 1955. In 1957, and in 1963, the County republished this same version of the "Black" and "Blue" books respectively. For the next fourteen years the County treated these three published versions of Section 413 as the established rule, by adhering to the regulation, insisting that others follow its dictates, and representing to the Courts that this version of Section 413 was the law to be applied to all cases coming within its ambit.

In 1969, without notice or hearing, the County published yet another looseleaf volume of zoning regulations, the Red Book, which substantially altered Section 413 as it appeared in the previously promulgated versions. In 1975, the County published a gold looseleaf edition of the regulations (the Gold book). In this edition, Section 413 followed the Red book but was inconsistent with the Black and Blue books. The County explains the inconsistency as follows: While searching County archives, some county employee found, secreted away in a value, the original version (the "Soft Book") of the 1955 zoning regulations which differed substantially from the three versions which the County had disseminated. Thereupon the Gold Books without notice or hearing, picking up the original Soft Book text that differed significantly from the mimeographed and the Black and Blue versions.

The Plaintiff cried foul: The County is changing the rules in the middle of the game. The Plaintiff contends that the County, by repeated publication, abandoned any adherence to the Soft Book and that its long adherence to and dissemination of the old Section 413 constituted a de facto ratification of the mimeographed version of the 1955 zoning regulations. In support of this contention the Plaintiff cites *Esage v. Pack*, 16 How. (59 US), 595 (1855) which holds that the government's long acquiescence to a law which it has promulgated constitutes a ratification of that law, even though the promulgated version differs from the original text.

The consistent versions of Section 413 in the early mimeographed publication and in the Black Book and the Blue Book became effective and controlling law by publication, dissemination, ratification and long acquiescence. This version of the law was not validly changed by either the Red or the Gold Book since the promulgation of these sets of regulations was not done after the notice and hearing required by Section 22 of the County Code.

This Court will declare that the Defendant must accept application for special exceptions submitted by the Plaintiff and, after hearing, determine the merits of the application based upon Section 413 as contained in the mimeographed publication of 1957 and 1963. This ruling is applicable only to Section 413 and to no other regulations. [Issued July 1, 1981, by Raine, J.]

EXCERPTS FROM BALTIMORE COUNTY CODE

Sec. 22-21. Preparation of zoning regulations and zoning maps.

(a) The planning board shall from time to time recommend to the county council for adoption, zoning regulations and zoning maps, showing the boundaries of the proposed districts, divisions or zones into which the county is divided pursuant to this title.

(b) The planning board from time to time may also recommend for adoption amendments or supplements to such regulations. All such amendments or supplements to the zoning regulations and all such comprehensive revisions of the zoning maps shall be made in accordance with the same procedure herein specified for the original adoption of such regulations and maps

(c) After such zoning regulations and zoning maps have been approved by the planning board, it shall release a preliminary report thereon. Thereafter, and subject to the giving of at least twenty (20) days' public notice in two (2) newspapers of general circulation in the county, the planning board shall hold one (1) or more public hearings on the proposed zoning maps. The board may hold one (1) or more public hearings on the proposed regulations or on matters referred to the board by the county council, unless required to hold such hearings by resolution of the county council adopted pursuant to section 22-7. During the period of such notice, the preliminary report of the planning board, with accompanying maps and exhibits, if any, shall be available for public inspection in the county office building. After such hearing or hearing have been held, the director of planning shall submit to the county council a report containing the final recommendations of the planning board with regard to the proposed zoning regulations, or maps, as the case may be; and, in the case of zoning maps, a copy of the final map as approved by the planning board shall be attached to such report. In the event of any disagreement among the members of the planning board as to any part of the proposed zoning map or regulations, the dissenting member or members shall be entitled to file with the county council one (1) or more minority reports stating the basis for their disagreement with the majority, which shall be included with the final report of the majority.

Sec. 22-22. Action by county council on adoption of zoning regulations and Zoning maps.

(a) After the county council has received a final report of the planning board recommending adoption of

any zoning regulations or zoning maps, the county council shall hold one or more public hearings thereon, giving at least twenty (20) days' notice thereof in at least two (2) newspapers of general circulation in the county. During such twenty (2) day period, the final report of the planning board together with any minority report and maps from any dissenting members of the planning board shall be available for inspection at the office of planning and zoning, in each councilmanic district and at such other public place as the county council may designate for public inspection. After the expiration of such period of notice, and following the public hearing or hearings, the county council may by ordinance adopt such regulations or maps, subject, however, to such changes or amendments therein as the county council may deem appropriate, but subject to the provision of Section 22-21(e).

QUESTION PRESENTED

After the Circuit Court for Baltimore County declared, in Metromedia v. Baltimore County, Equity No. 103167, what was the effective version of Section 413 of the Baltimore County Zoning Regulations, may the Zoning Commissioner ignore the decision, and permit the County to republish a different version of Section 413, so that outdoor advertising signs may not be granted as a Special Exception in a B.R. zone?

ARGUMENT

What Metromedia Declared.

The Metromedia decision exemplifies the "very confused and conflicting history" of Section 413 of the zoning regulations. In that context, the Metromedia case was initiated and pursued under Subtitle Four of Title 3 of the

Courts Article, Md. Code. A suit for declaratory judgment seeks "to settle and afford relief from uncertainty" rights under a County ordinance.⁷ The Court's declaration, moreover, "has the force and effect of a final judgment."⁸

This Court, in Metromedia, relying upon venerable authority,⁹ determined that the version of Section 413 set out in Petitioners' Exhibit C "became effective and controlling law by publication, dissemination, ratification and long acquiescence [Emphasis supplied]." This law, the Metromedia opinion continued, "was not validly changed by either the Red or the Gold Book since the promulgation of these sets of regulations was not done after the notice and hearing required by Section 22 of the County Code."

⁶ § 3-402, Courts Article, M.D. Code; Cochran v. Zoning Comm'r., 41 Md. App. 437, 439-440 (1979); Marriott Corp. v. Village Realty & Inv., 58 Md. App. 145, 472 A.2d 510, 513 (1984). See also Restatement, Judgments, 2d (1982), p. 334 (quoted *infra*, p. 18-19).

⁷ See § 3-406, Courts Article, Md. Code.

⁸ Section 3-411, Courts Article, Md. Code.

⁹ Pease v. Peck, 18 How. (59 U.S.) 595 (1855). See particularly, 18 How. (59 U.S.) at 596-7. For similar rulings, see Town of Pacific v. Seifert, 79 Mo. 210, 213 (1883); Wade v. Woodward, 145 So. 737 (Miss. 1933); Edel v. Filer Township, Maines County, 211 N.W.2d 547 (Mich. App. 1973); O.P. Corporation v. Village of North Palm Beach, 278 So.2d 593 (Fla. 1973); City of Creston v. Center Milk Products Co., 51 N.W. 2d 453, 465 (Iowa, 1952); Taylor v. Schlemmer, 163 S.W.2d 913, 196 (Mo. 1944).

Consequently, Metromedia declared that the County must apply the version of Section 413 contained in Petitioners' Exhibit C to "applications for special exception submitted by" Petitioners.¹⁰ Those versions include B.R. as a zone in which an outdoor advertising sign may be placed as a Special Exception.

In sum, Metromedia declared, as the applicable law, the versions of Section 413.3 which included B.R. as a zone in which, by Special Exception, an outdoor advertising sign could be erected. Further, Metromedia holds that the "applicable law" could not be amended except in accord with Section 22 of the County Code.

The Maryland cases make clear that notice and hearing on amendments to zoning regulations are mandatory. Failure to give notice required by law, for example, is fatal to the jurisdiction to conduct a hearing. See Cassidy v. County Board of Appeals of Baltimore County, 218 Md. 418, 421-22 (1958). Indeed, even if initial notice is given, substantial change from what was announced is not proper. See Ransake v. Board of County Commissioners, 268 Md. 295 (1973); Von Lusch v. Board of County Commissioners, 268 Md. 445, 454 (1973).

Without affording notice and hearing, there was no substantial

¹⁰ There is no doubt that the contract lessee is a division of Metromedia, Inc., the plaintiff in the Metromedia case.

compliance with the "applicable law," Crozier v. Co. Comm. Fr. George's Co., 202 Md. 501, 506 (1953), and the publication in the current regulations of the repudiated Gold Book version of Section 413.3 is invalid.

CONCLUSION

This identical issue, i.e., whether Section 413.3 includes B.R. as a zone in which, by special exception, an outdoor advertising sign could be erected has been litigated twice by the contract lessee. Initially, in Metromedia, Inc. v. Baltimore County, Eq. No. 103167, Judge Raine decided the answer in the affirmative. Thereafter, this identical issue came before the Honorable Joseph F. Murphy, Jr. in Circuit Court for Baltimore County Case No. 2/135/84CG435, docketed as In the Matter of the Application of Euclay Realty for a Special Exception. A copy of Judge Murphy's Order in that case is attached hereto as Exhibit B and incorporated by this reference. Judge Murphy agreed, and therefore, reversed the denial of the Petitions for Special Exception in a B.R. Zone by the County Board of Appeals.

Simply stated, Metromedia and Euclay Realty decided that the early disseminated mimeographed version of § 413.3 is the controlling law. That version, i.e. in the Black Book or the Blue Book included B.R. as a zone in which a Special Exception could be granted. The existence of Metromedia of the declaration of the law means that in order for Baltimore

County to amend § 413.3 of the zoning law, the dictates of Section 22-21 and 22-22 of the County Code would have to be followed. They were ignored. Therefore, the version of Section 413.3 declared to be the law in Metromedia was not effectively amended in the publication of the new regulations. Without adhering to Section 22-21 and 22-22 after the Court's declaration of the law, the Black and Blue Book versions of Section 413.3, which include B.R. as a zone in which an outdoor advertising structure may be located as a Special Exception must be applied.

The Petitioners implore the Zoning Commissioner to review the decisions rendered by the Circuit Court for Baltimore County, and, because the Petitioners have satisfied their burden of proof with respect to complying with the criteria articulated in Sections 413.3 and 502.1 of the B.C.Z.R., the Petitioners respectfully request that the Zoning Commissioner grant the Petitions for Special Exceptions.

Respectfully submitted,

Stuart R. Berger
Stuart R. Berger

WEINBERG AND GREEN
100 South Charles Street
Baltimore, Maryland 21201
(301) 332-8662

Attorneys for Petitioners

METROMEDIA, INC.
Plaintiff
v.
BALTIMORE COUNTY, MARYLAND
et al
Defendants

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
EQUITY NO. 103167

MEMORANDUM OPINION

In 1955 the County published a mimeographed version of Section 413 of the Baltimore County Zoning Regulations which purported to be in conformity with certain regulations adopted by the County Commissioners of Baltimore County on March 30, 1955. In 1957, and in 1963, the County republished this same version in the "Black" and "Blue" books respectively. For the next fourteen years the County treated these three published versions of Section 413 as the established rule, by adhering to the regulation, insisting that others follow its dictates, and representing to the Courts that this version of Section 413 was the law to be applied to all cases coming within its ambit.

In 1969, without notice or hearing, the County published yet another looseleaf volume of zoning regulations, the Red Book, which substantially altered Section 413 as it appeared in the previously promulgated versions. In 1975, the County published a gold looseleaf edition of the regulations (the Gold book). In this edition, Section 413 followed the Red book but was inconsistent with the Black and Blue books. The County explains the inconsistency as follows: While searching County archives, some county employees found, secreted away in a vault, the original version (the "Soft Book") of the 1955 zoning regulations which differed substantially from the three versions which the County had disseminated. Thereupon the County promulgated a new version of Section 413 in the Red and Gold Books without notice or

IN THE MATTER OF THE
APPLICATION OF
EUCLAY REALTY
FOR A SPECIAL EXCEPTION
ETC.
APPEAL FROM THE COUNTY
BOARD OF APPEALS OF
BALTIMORE COUNTY
File No. 84-93-X

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Case 2/135/84CG435

ORDER

This Appeal having come on for a hearing in open Court on November 26, 1984, after the submission of the memoranda allowed by Rule 812, and the reasons for this Court's judgment having been set forth on the record during the proceedings on November 26, 1984, it is this 29th day of November 1984, ADJUDGED, ORDERED and DECREED that the Order of the County Board of Appeals dated July 11, 1984 is reversed and the Special Exception petitioned for by Appellants be and the same is hereby granted.

Approved as to form:

Joseph F. Murphy Jr.
Joseph F. Murphy Jr.
Peter Max Zimmerman
Deputy People's Counsel
Room 223, Court House
Towson, MD 21204

M. Albert Figinski
M. Albert Figinski
Melnicove, Kaufman, Weiner &
Smouse, P.A.
36 S. Charles Street
Baltimore, MD 21201

IN RE: PETITION FOR SPECIAL
EXCEPTION
82/5 Liberty Road, 312'
S of c/l Essex Road
(7028 Liberty Rd)
2nd Election District
2nd Councilmanic District

Richard Kim, Et ux
Petitioners

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The Petitioner requests approval of a Special Exception to use the herein described property for one (1) illuminated 12' x 25' outdoor advertising (sign) structure, as more particularly described on Petitioners' Exhibits 1 and 1A.

The Petitioner, Penn Advertising of Baltimore, Inc., appeared by their agent, Mr. Freedman, and were represented by Stuart R. Berger, Esquire. The petitioner, Richard Kim, did not appear. There was one Protestant, Mrs. Judith Berger, representing Lochearn Improvement Association.

The subject request is for an outdoor advertising sign as defined in Section 101 of the Baltimore County Zoning Regulations (B.C.Z.R.) in the B.R. zone on the subject site shown on Petitioner's Exhibits 1 and 1A.

The current 1987 edition of the B.C.Z.R. list the following regulations for outdoor advertising signs:

"413.3-Outdoor advertising signs as defined in Section 101 are allowed only in B.L., B.M. M.L., and M.H. zones as Special Exception, under the following conditions, as limited by Section 413.5: (B.C.Z.R., 1955)".



County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

April 13, 1989

Stuart R. Berger, Esquire
100 S. Charles Street
Equitable Tower II Building
Baltimore, Maryland 21201-3060

Re: Richard Kim, et ux
Case No. 88-487-X

Dear Mr. Berger:

Enclosed please find a copy of the Opinion and Order issued this date by the County Board of Appeals in the subject case.

Sincerely,

Linda Lee M. Kusymaul
Linda Lee M. Kusymaul
Legal Secretary

Enclosure

cc: Mr. and Mrs. Richard Kim
Mr. Freedman
Ms. Judith Berger
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
Docket Clerk
Arnold Jablon, County Attorney

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IN THE MATTER OF THE
APPLICATION OF RICHARD KIM,
ET UX FOR PETITION FOR
SPECIAL EXCEPTION ON PROPERTY
LOCATED ON THE NORTHEAST SIDE
OF LIBERTY ROAD, 312' SOUTH
OF CENTERLINE OF ESSEX ROAD
(7028 LIBERTY ROAD), FOR ONE
ILLUMINATED 12' X 25' ADVER-
TISING STRUCTURE
2ND ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY

Case No. 88-487-X

OPINION

This case comes before this Board on appeal from a decision of the Zoning Commissioner denying the requested special exception.

This case was set for hearing at 1:00 p.m. on April 12, 1989. As indicated on the record in this case, at 1:27 p.m. on April 12, 1989, the Board dismissed the appeal for lack of appearance since neither Petitioner nor his attorney was present at that time. As furtherance of the decision rendered above, the record will indicate that Petitioner's attorney contacted the Board Chairman on April 11, 1989 and indicated that he did not intend to pursue the Petition and wished it withdrawn.

ORDER

It is therefore this 13th day of April, 1989 by the County Board of Appeals of Baltimore County ORDERED that the Zoning Commissioner's Order denying the requested special exception be AFFIRMED.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

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RICHARD KIM, et ux
Plaintiff/Appellant
v.
BALTIMORE COUNTY BOARD OF
APPEALS
Defendant/Appellee

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
County Board of Appeals
Case No. 88-487-X
CASE NO. 89CG1671

ORDER

This Appeal having come to this Court for a hearing on October 3, 1989, after the submission of memoranda allowed by Maryland Rule 812, it is this 10th day of October, 1989,

ADJUDGED, ORDERED AND DECREED that the Order of the County Board of Appeals for Baltimore County dated April 13, 1989 is Reversed. The appeal pending before the County Board of Appeals of Baltimore County (CBA) was dismissed prior to the April 12, 1989 hearing date. Therefore, the CBA was divested of jurisdiction to rule on the decision of the Zoning Commissioner. The order of the CBA in affirming the decision of the Zoning Commissioner was in error.

William R. Buchanan, Sr.
William R. Buchanan, Sr.
Judge

46 MD. COMM. ON HUMAN REL. v. B.G. & E. CO.
Syllabus 1296 Md.

MARYLAND COMMISSION ON HUMAN
RELATIONS v. BALTIMORE GAS
AND ELECTRIC COMPANY

[No. 66, September Term, 1982]

Decided April 26, 1983

ADMINISTRATIVE LAW — Exhaustion Of Remedies — Statutorily Prescribed Administrative And Judicial Remedies Must Ordinarily Be Pursued And Exhausted

ADMINISTRATIVE LAW — Exhaustion Of Remedies — To Exhaust Administrative Remedies, Ordinarily A Party Must Pursue The Prescribed Administrative Procedure To Its Conclusion And Wait Its Final Outcome. Generally A Party Can Resort To A Court Only When There Is A Final Order In The Administrative Proceedings. Maryland Code (1982, Encl. Repl. Vol. 1) Art. 41, § 258 (a), Administrative Procedure Act. p. 31

ADMINISTRATIVE LAW — Appealability — An Order Of Court Is Final And Hence Appealable When It Determines Or Concludes The Rights Of The Parties Or When It Leaves No Means Of Further Proceeding On Pending Issues And Interests. In The Subject Matter Of The Proceedings — A Trial Court's Order Remanding A Case To An Administrative Agency Constitutes A Final Order For Purposes Of Further Judicial Review. p. 32

ADMINISTRATIVE LAW — Priority Of Decision — An Administrative Agency's Action Is Final If It Determines The Rights Of The Parties And Leaves Nothing Further For Agency To Do. Where an order of the agency is head of the Human Relations Commission remanded the case to a Commission hearing examiner to decide whether the agency's action to hire the wife of an employee was unlawful discrimination, the Court held that this order was not a final decision of the administrative agency entitling the employee to immediate judicial review. p. 33

A. I. C.

Appeal from the Baltimore City Court (Kane Area and Thomas, JJ.), pursuant to certiorari to the Court of Special Appeals.

From an order by the Maryland Commission on Human Relations remanding a discrimination complaint to a Commission hearing examiner for a further hearing, the

MD. COMM. ON HUMAN REL. v. B.G. & E. CO. 47
461 Opinion of the Court.

Baltimore Gas and Electric Company appealed to the Baltimore City Court (now Circuit Court for Baltimore City). From an order of the court remanding the case to the Commission, the Commission appealed to the Court of Special Appeals. The Court granted certiorari prior to a decision by the Court of Special Appeals.

Judgment of the Baltimore City Court (now the Circuit Court for Baltimore City) vacated. Case remanded to the Circuit Court for Baltimore City with instructions to dismiss. Costs to be paid by respondent.

The cause was argued before Murray, C. J., and Surrin, B. Rogers, Calk, Davison, Rosowsky and Cohen, JJ.

Russell Rosenthal Fleisher, General Counsel, for appellant.

Stanley Mazaroff, with whom were Venable, Baetjer & Howard, Michael D. Rind and James A. Haddon, Jr., on the brief, for appellee.

DAVISON, J., delivered the opinion of the Court.

The primary question this case presents concerns the doctrine of exhaustion of statutorily prescribed administrative and judicial remedies. More particularly, the question is whether an administrative agency appeal board's order remanding a case to a hearing examiner for further proceedings constitutes a final decision that entitles a party to immediate judicial review.

On 22 November 1978, the petitioner, Maryland Commission on Human Relations (Commission), filed a complaint, see Md. Code (1957, 1978 Repl. Vol.), Art. 49B, § 9 (b), against the respondent, Baltimore Gas and Electric Company (B G & E), alleging that B G & E's policy of refusing to hire the spouse of an employee constituted discrimination based upon marital status.¹ B G & E denied

¹ Md. Code (1957, 1978 Repl. Vol.), Art. 49B, § 16 (a) (1) provides in pertinent part:

TYRRE v. BALTIMORE COUNTY 135
135] Syllabus.

579. *supra*. In the latter case, the law was said to be, on the strength of some twenty cited cases, that a State may increase or diminish the rate of compensation of a common or of a contract carrier against the wills both of the carrier and the person who is obligated to pay him, regardless of pre-existing contracts between them. We do not decide that the Legislature could not constitutionally provide for regulation of the rates of contract carriers of flammables if, in its judgment, this was an appropriate means of controlling the use of the roads and of regulating competition affecting common carriers. We decide only that the Legislature has not yet granted the Commission that power. The conclusions we have reached make it unnecessary that we pass on any of the other contentions of the parties.

Decree reversed and case remanded for further proceedings not inconsistent with this opinion, appellees to pay the costs.

TYRRE ET AL. v. BALTIMORE COUNTY ET AL.
[No. 82, September Term, 1957.]

ZONING—Change of Use—Denial of Right to Seek Again for Stated Period of Time. An owner of property may be denied entirely, for the period of time stated in a zoning ordinance, the right to seek again a special permit for a change of use. p. 139

STATUTES—Legislative Intent—Considering Meaning and Effect of Words in Light of Setting, Purpose of Enactment, Ends to Be Accomplished and Consequences. In determining legislative intent in doubtful cases, the courts must consider not only the literal or usual meanings of the words used, but their meaning and effect in the light of the setting, the purposes of the enactment, the ends to be accomplished and the consequences that may result from one meaning rather than from another. p. 140



Baltimore County, Maryland

PEOPLE'S COUNCIL
ROOM 304, COUNTY OFFICE BUILDING
111 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
867-288-2188

PHYLLIS COLE FRIEDMAN
People's Counsel

PETER MAX ZIMMERMAN
Deputy People's Counsel

August 24, 1990

The Honorable
J. Robert Haines
Zoning Commissioner of
Baltimore County
County Office Building
Towson, Maryland 21204

RE: Richard Kim, et al., Petitioners
Case No. 90-505-X

Dear Commissioner Haines:

I am in receipt of the letter memorandum filed by Stuart R. Berger dated August 10, 1990 and feel compelled to respond. The thrust of Mr. Berger's legal argument relies upon a case decided in 1957 based upon language in Section 500.12 that was significantly changed by Council Bill No. 25-78, copy enclosed.

In light of these legislative changes, the *Tyrre* case is no longer good law and Mr. Berger's response is inapposite.

Sincerely yours,

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

Enclosure

cc: Stuart R. Berger, Esquire

PCF:sh

RECEIVED
AUG 27 1990

ZONING OFFICE



LIBERTY COMMUNITIES DEVELOPMENT CORPORATION, INC.

3820 Fernside Road • Randallstown, MD 21133 • (301) 655-7766

June 28, 1990

Ms. Ann Nastarowicz
Deputy Zoning Commissioner
Baltimore County
County Office Bldg.
111 West Chesapeake Ave.
Towson, MD 21204

Re: 7028 Liberty Road
Citation #90-396, and
Case #90-505-X

Dear Ms. Nastarowicz:

As you will recall LCDC is a local business organization working throughout the length of the Liberty Road revitalization Area. We consist of over 200 business members and operate under contract with the County's Economic Development Commission. We are seeking your assistance and guidance on solving a signage and zoning problem at the above address.

Earlier this year the owner, Mr. Kim, received a citation (#90-396) for improper signage. It is my understanding that the complaint was related to advertising signs which were mounted on the side of the building. This store, unlike many other liquor stores, lacks display windows and as a result he displayed his advertising of "specials" on the side brick wall of the building. In any event, this signage has been totally removed. Additionally, Mr. Kim has verbally agreed with our office to remove two other obsolete free standing signs in the front of the building. Mr. Kim has also agreed that any new replacement signage for advertising will be in accordance with zoning regulations and will have the necessary permits. Our office is willing to work with the store on the design and permits of these signs.

In June of 1988 Penn Advertising worked with this store and attempted to gain a Special Exception (88-487-X) for an illuminated 12 ft. X 25 ft. sign. We considered this to be a billboard and we opposed the petition which was delayed and eventually withdrawn. Penn Advertising, under the property owner's name is again seeking a Special Exception (90-505-X) for a similar sign.

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I have recently met with Mr. Kim and explained that LCDC is in opposition to the Special Exception and would prefer if the petition were withdrawn, or if that is not possible, that he understand the community's opposition and reconsider his arrangement with Penn Advertising.

It is our hope to consolidate these various issues into one item and thereby lessen and improve the signage at this address. We would like to respectfully propose that we continue to work with Mr. Kim on removing the improper signage and on designing and gaining permits for any replacement signage. Hopefully, this action would eliminate the need for further prosecution and the imposition of fines. At the same time we will attempt to eliminate the proposed billboard in the most expeditious manner.

We appreciate your consideration on this matter.

Sincerely,

Jim Janas
Jim Janas
Director, LCDC

cc: Richard Kim

The Honorable J. Robert Haines
Zoning Commissioner of
Baltimore County
111 West Chesapeake Avenue
Room 100
Towson, Maryland 21204

Dear Zoning Commissioner Haines:

At the conclusion of the hearing of the above-referenced petition for special exception, you requested that Ms. Friedman and I submit to you any authority we could locate pertaining to the Zoning Commissioner's jurisdiction to entertain the above-captioned petition for special exception.

Pursuant to your request, I am submitting this letter to you in lieu of filing a memorandum of law. At the hearing on August 2, 1980, I supplied the Board with a memorandum on behalf of petitioner which was attached to the original petition. The above-captioned petition recites the substance of the memorandum.

See pages 1-4 of petitioner's memorandum. In sum, the petitioner filed its original petition for a special exception on March 30, 1978. On October 10, 1978, the original petition was denied. On January 16, 1979, the appeal was affirmed. The appeal was noted with the County Board of Appeals, but the appeal was dismissed prior to the hearing before the Board of Appeals. Thereafter, the Board -- without jurisdiction -- affirmed. On affirmed the denial of the petition for a special exception. On appeal from the Board of Appeals, the Circuit Court of Baltimore County reversed the Board of Appeals, and expressly held that:

The Honorable J. Robert Haines
August 10, 1990
Page 2

The appeal pending before the County Board of Appeals of Baltimore County (CBA) was dismissed prior to the April 12, 1989 hearing date. Therefore, the CRA was divested of jurisdiction to rule on the decision of the Zoning Commissioner. The order of the CBA in affirming the decision of the Zoning Commissioner was in error.

Thereafter, a subsequent petition for special exception was filed by the petitioner. At the hearing on this petition, Ms. Friedman, on behalf of People's Counsel, argued that the Zoning Commissioner did not have the jurisdiction to entertain the petition because the Zoning Commission had already rejected the petition. People's Counsel also argued that the Zoning Commission's opinion. People's Counsel for the petitioner and contract lessee argued that the 18 month requirement prescribed by Section 500.12 of the Baltimore County Zoning Regulations was a condition of the 2010 Zoning Commissioner's denial of the petition for special exception.

Pursuant to the Zoning Commissioner's request, we researched the history of Section 500.12 in an effort to locate case law which either supports or contradicts our contention that the Zoning Commissioner has jurisdiction to entertain the petition at issue. Under cover of this letter, I am enclosing a copy of Tyrie v. Baltimore County, 215 Md. 125 (1957). Tyrie specifically addressed the jurisdiction of Section 500.12 of the Baltimore County Zoning Regulations to a case very similar to the petition at bar. In Tyrie, the owners of a tract of land filed a petition with the Zoning Commissioner for a reclassification of the zone in which the property was situated. The Zoning Commission denied the petition, and the owners subsequently filed an appeal with the Zoning Board of Appeals. Thereafter, the Court of Appeals, per Judge Hall Hammond, held that:

Although an appeal was noted, it was withdrawn before hearing, and the order of the Zoning Commissioner became final as of the date of its issuance.

Id. at 138 [emphasis added].

Thus, the Tyrie Court held that because the appeal was voluntarily dismissed, the 18 month waiting period contained in Section 500.12 of the Baltimore County Zoning Regulations began running when the Zoning Commissioner issued his denial.

The appellee in Tyrie later acquired the land in question and applied to the Zoning Commissioner for a special exception. The appellee's request was granted before the end of the 18 month


The Honorable J. Robert Haines
August 10, 1990
Page 3

waiting period. Because the Court ruled that that application for a special exception was legally the same as a petition for reclassification, the Court concluded that the Zoning Commissioner's action violated § 500.12. In rejecting the Zoning Commissioner's actions, the Court held that the Zoning Commissioner's "power is only such as the legislative body has given him and under [§ 500.12] he lacked jurisdiction at the time he acted, so that his act was a nullity." Id. at 141.

The Trilis Court clearly held that a decision issued notwithstanding a lack of jurisdiction will be considered a legal nullity. Therefore, because the judgment of the County Board of Appeals in the instant case was issued despite its lack of jurisdiction, the Board's decision is a legal nullity. The subsequent Circuit Court decision, which was based on the Board's decision, is also a nullity as a matter of law. Accordingly, as explicated in Trilis, it is clear that the 18 month waiting period for the Zoning Commission to act on the petition, which began on the date when the Zoning Commissioner issued his denial of the original petition for special exception.

In summary, both Tylic and the instant case involve an appeal which was noted but later withdrawn. As such, "[a]lthough an appeal was noted, it was withdrawn before hearing, and the order of the Zoning Commissioner became final as to the County Board of Appeals." The County Board of Appeals' decision was nullified due to its lack of jurisdiction to entertain the appeal, the 18 month waiting period required under the Zoning Ordinance began to run on the date of the Zoning Commissioner's denial, i.e. on October 10, 1988.

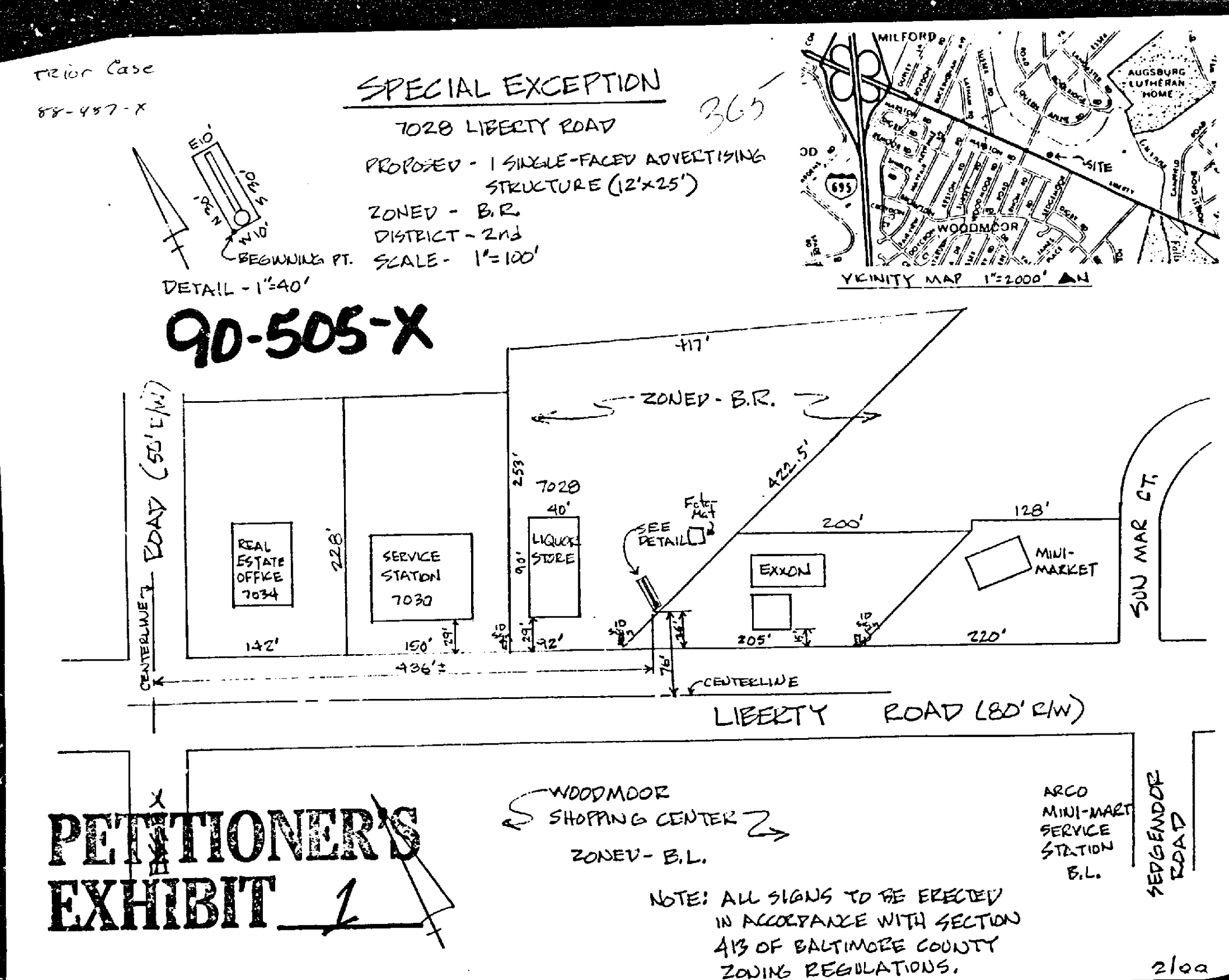
Thank you for your consideration.

Very truly yours,

 Stuart R. Berger

BGY76:59086/0366/ra.

cc: Phyllis Cole Friedman, Esq.
People's Counsel for Baltimore County

Enclosure



PETITIONER'S 90-505X
EXHIBIT 2

